88-1192

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NO.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1989

ALVIE B. GRAHAM,

Petitioner,

vs.

JUDGE J. WARREN BETTIS
ET. AL.,

Respondent.

PETITION FOR A WRIT CERTIORARI
TO THE OHIO SUPREME COURT

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100pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether a state court can operate as a court, absent a qualified judge to hear and rule on motions when court has been disqualified and Supreme Court has not notified litigant of status of Judges of Court of Common Pleas.

2. Whether a State Court use of Rule 37-D State of Ohio, absent a qualified judge to dismiss a Jury Demand trial in a civil liberties cause, and fail to review it in appellate, Exhibit #3 review. See transcript of July 29, 1981 82-CIV-695.

3. Whether a state appallate court can refuse to review all errors of Common Pleas State of Ohio when two distinct causes are combined in a single opinion. Decision by a state court judge, when said judge forces a person to proceed pro se and then penalizes pro se for argument brief in combination.

4. Whether Supreme Court in State of Ohio can refuse to issue an opinion and answer Mandamus, to correct their records, when question presented is used to dismiss a civil liberties cause, when seven judges in court made concurring votes to dismiss, Mandamus and cause litigant to suffer in six years of litigation because of pro se and denies due process of law by failure to issue an appealable order.

5. Whether state judge can issue a combination decision on a 60B motion for relief and suit for civil liberties, then deny that an appeal has been made. Appellate Court rules that an appeal was not profected when five assignments of errors and sixty-four cause of laws were cited in appeal and argued as combined brief. See appellate brief for information.

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JUDGE J. WARREN BETTIS,
ET. AL.,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE OHIO SUPREME COURT

Petitioner, Alvie B. Graham, respectfully prays that a writ of certiorari to review the judgement of the Columbiana Court of Appeal, Seventh District, State of Ohio affirming respondent claim for violation of Rule 37(D), State of Ohio.

OPINIONS BELOW

Upon consideration of the motion for an order directing the Court of Appeals for Columbiana County to certify its record, it

is ordered by the Court that said motion is overruled, this order of the Supreme Court of Ohio and appears as Appendix A to this petition. Alvie B. Graham vs. Judge J. Warren Bettis, Et al., No. 88-754 (1988). The unpublished report of the Seventh District Court of Appeals, Columbiana County, Ohio is reproduced as Appendix B to this petition. The Transcript of the proceedings of July 29, 1982, is reproduced as Appendix C of this petition. The decision of the Ohio Supreme Court in No. 82-1517 is reproduced as Appendix D to this petition.

JURISDICTION

The decision of the Supreme Court of Ohio-1988 term 88-754; August 3, 1988; Upon consideration of the motion for an order directing the Court of Appeals for Columbiana County to certify its record, it is ordered by the Court that said motion is overruled.

Accordingly, the jurisdiction of this Court is invoked under the United States Constitution and this Court's decision No.81-440 U.S. Law Week Supreme Court Opinions, INSURANCE COPR. OF IRELAND, LTD. et al. PETITIONERS v COMPAGNIE des BAUXITES de GUINA

The fourth and fourteenth amendments to the United States Constitution, and 28 U S C section 1254

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

"The right of the people to be secure in their persons houses, papers, and effects, against unreasonable searches and seizures', shall not be violated..." Fourth Amendment to the United States Constitution.

"...nor shall any State deprive any person of life, liberty,or property, without due process of law;..." Fourteenth Amendment, Section 1 to the United States Constitution.

"State officials charged as individuals with unconstitutional activity are amenable to suit under this subchapter. Stebbius v. Weaver, D.C. Wis. 1975, 396 F. Supp." Title 42 § 1983

"A person need not be a state officer to be held to have acted under color of state law within the meaning of this section: it is enough that he is a willful participant in joint activity with the state or its agents. Meyer v. Lavelle, D.C.Pa. 1975, 380 F. Supp. 972." Title 42§ 1983.

"When a public official acts in an unconstitutional manner, his actions are stripped of their official cloak and he may be ordered to perform his official duties in a manner consonant with the Constitution; under

this legal fiction, the state is presumed not to accede to unlawful actions taken by one of its officials so that an order directed to the official to affirmatively correct his action is not being directed against the state, for purpose of determining whether suit is against a 'person,' within meaning of this section. O'Brien v. Galloway, D. C. Del. 1973, 362 F. Supp. 901."
Title 42 § 1983

MANNER IN WHICH CONSTITUTIONAL CLAIMS WERE RAISED

That on October 30, 1981, Judge Bettis dismissed the Court and granted this petitioner an outside judge. But the Court then sought out for the reclaiming of this petitioner and then transferred the cause to the docket of Judge Kennedy, who also comprises the same Columbiana County court. The subsequent dismissal on Rule 37(D) minus the protection of a qualified judge to rule on this petitioners' motions along with the arguments brought before the courts on the due process of law and the violation of the Fourth and Fourteenth Amendments of the United States Constitution has raised serious questions that have as yet gone unanswered. Any yet it is apparent that such questions have been thought through as is supported in the decision of Insurance Corp. of Ireland, Ltd., Et al. v. Compagnie des Bauxites de guinea, U.S. Law Week-Supreme Court Opinions-No. 81-440.

After an evidentuary hearing, Judge David T. Matia granted the defense motion, over this petitioner's objection, on jurisdictional grounds. This petitioner then appealled the cause to the Seventh District Court of Appeals in which throughout the brief were cited numerous Federal case laws, supportive to the matter appealled to that court. The Appellate Court held that dismissal under Rule 37(D) was harsh but justified, contrary to the facts presented by this petitioner.

The Supreme Court of the State of Ohio refused to review the matter, which once again furthered the denial of due process of law. Such actions now bring this petitioner seeking review of the Constitutional Rights.

STATEMENT OF THE CASE

The cause now before this Court orginated as a divorce suit in the Court of Common Pleas of Columbiana County as Case 80-CIV-1000, a divorce proceeding in which a flawed decision was issued with no avenue of appeal for this petitioner, because of the manner in which Judge Bettis and Larry Dickey, Attorney for the Plaintiff, handles the cause. Because Attorney Dilley was hospitalized, I was denied the right to an appeal of the decision of November 17, 1980, in Case 80-CIV-1000. I had no contact with Attorney Dilley until February 6, 1981, at which time he composed and sent a letter to Judge Bettis to explain the situation with no response. See Informational Packet (I.P.)6. Attorney Dilley then filed a motion on April 30, 1981. That motion was strong and might have had a bearing on the Judges' actions on March 28, 1981. But the resulting actions did not belong in a court of law, namely that of the "kangaroo court"

held on May 29, 1981.

The resulting actions were that upon Attorney Dilley's attempt to present a defense, he was twice reminded by Judge Bettis that he was at the fine line of contempt. Attorney Dilley then had me take the stand to speak on my own behalf. Upon issuing some few words, Judge Bettis found me guilty of direct contempt of court and sentenced me to ten days in jail. See affidavits of Attorney Dilley and myself, I.P. 12.

It was quite apparent that Attorney Dilley's health was not good enough to withstand any more abuse at the hands of this Court and I was left without interested Counsel on July 31, 1981. After the decision of the Court, I filed a letter by Certified Mail with the Clerk of Courts as to my situation and intentions. But due to health problems of my own, I had to remove myself from further involvment from the matter until such time as my doctor allowed me to continue. See I.P. 3.

After that, Attorney Smith was employed

as Counsel on my behalf, and was instructed that he was to work with Attorney Dilley on this case to perfect an appeal. Attorney Smith went and spoke with Judge Bettis and after he related the facts to me it became quite clear the course neccessary in order to perfect an appeal.

A transcript of the Divorce and May 29, 1981 proceedings were ordered and after carefully checking the records with the Court Reporter, Kaye Bettis, it was found that Virginia M. Pastore was the court reporter of record for that day. All of the tapes for all of the cases on the docket for May 29, 1981 were in the file with the exception of 80-CIV-1000. See Docket sheet, that date, R. 300; Columbiana Court of Common Pleas, Judge J. Warren Bettis, Court Rm. 1. I.P. 7. Attorney Smith, after three months, tried to convince me not to file an appeal on the matter and that the 60B Motion was an alternative to my situation. It was apparent, after his failure to produce a 60B Motion and to file a timely appeal along with

his statement of the facts as to his meeting with Judge Bettis, that he had decided to protect Judge Bettis or was informed by the Judge as to what his chances of an Honest appeal would be. The factors of the affidavits of Attorney Dilley and myself filed in case 80-CIV-1000, the 60B Motion, 82-CIV-695 and the actions of Judge Bettis, Et al., Respondents and the letter that Attorney Smith delivered to Judge Bettis (See I.P. 12) to see if settlement could be made, should have finalized this matter. After a consultation, Attorney Smith reccommended that I file Chapter 13 because of the actions of Judge Bettis and Attorney Dickey, in the original suit in Case 80-CIV-1000, and sent me to Attorney Davis, whose father (a Mahoning County Judge) he had helped when he was brought up on a charge of misuse of funds. I filed Chapter 13 for protection from these pettifogging shysters in this County.

After ten months of meetings and appointments, I sent a letter to Attorney Smith as to

his position on this cause. See I.P. 1. That finally led to the filing of a Motion to Vacate Judgment under 60B in case 80-CIV-1000 and eventually to the filing of 82-CIV-695, Suit for Damages-Jury Demanded.

It became quite clear to this Pro Se that, after the disqualification of Judge Bettis, that the Court would try to gain jurisdiction of this petitioner, now before this Court. The main thrust of the court was to regain control of the cause before it, that being a 60B Motion to Vacate and Suit for Damages, jury demanded.

On July 29, 1982, a hearing was held in the Common Pleas Court of Columbiana County, at which time the judge of record, Richard D. Kennedy, ruled. See pages 6-8 of the transcript, July 29, 1982, Case 80-CIV-1000. See Motion to Amend Change of Venue to 82-CIV-695, in the transcript of Case 80-CIV-1000 in Plaintiff's Exhibit 3, 82-CIV-695. The Respondents filed a Motion for Deposition with the last motion being on August 30, 1982.

This petitioner argued that there was no court for the protection of his rights from the actions of the respondents and that Attorney Smith had not filed his cause but had asked for leave to plead. On August 26, 1982, this petitioner filed for protection under Rules 26 and 30 of the Ohio State Courts. (See I.P.9) On September 30, 1982, this petitioner filed a Mandamus to Compel (See I.P. 11) Judge Kennedy and the Clerk of Courts to file within five (5) days to advise this petitioner as to the decision of the Supreme Court of the State of Ohio. On the sixth day, this petitioner accompanied by a witness, made an appearance at the office of the Administrator of the Supreme Court of Ohio. After checking, this petitioner was told that no papers had been forwarded to that Court.

After two telephone calls, recorded on cassette tapes, to the Administrator he in turn sent a letter on October 15, 1982 at which time Judge Kennedy stepped down. In the Mandamus of September 30, 1982, the Court was

again warned that any of their actions would violate the due process of law as is upheld in the cases of McDonald vs. Mabee, U.S. 90 (1917) and Hammond Packing Co. vs. Arkansas, 212 U.S. 322 (1909). See I.P. 10.

The trial judge upheld that Plaintiff, Alvie Graham, after notice, unjustifiably and willfully refused to attend his own deposition after it had been three (3) times rescheduled by defense counsel at Plaintiff's request. This petitioner then appealled the cause to the Seventh District Court of Appeals. The matter of jurisdiction and due process of law was argued throughout the Appellant's Brief in Case 84-C-51 with such matters being fully supported at pages 13-15 and 20 of Petitioner's Brief.

In the findings of the Appellate Court Judges, it upheld that it is appellant's burden to demonstrate not only that error intervened but that such error afftected a substantial right.

The actions are quite clear and can be

further ascertained by a through review of the Transcript - 1983 Term, Court of Common Pleas in cases 80-CIV-1000 and 82-CIV-695. The subsequent actions of the Respondents from July 29, 1982 and the result of a failed appeal on the issues now brings this cause to this Supreme Court of the United States for action.

REASONS FOR GRANTING THE WRIT

This Petitioner presents to this Court the reasons for the granting of the Writ of Certiorari. Throughout this petition you will find that the arguments presented by the respondents are actually those of this petitioner that have been presented in rambling defense of this case in each and every instance at the various trials of this case. The petitioner wishes to point out to this Court that in cause 82-1517, which was before the Supreme Court of Ohio, and appears as Plaintiff's Exhibit 1 in the March 28,1982 transcript of case 82-CIV 695 at page 7 is found petitioner's statement;

> "That this Motion for Mandamus should stand and that the records should be corrected and the question of jurisdiction is clearly outlined in the U.S. Supreme Court's decision of 1982 in the case of Ins. Corp. of Ireland, LTD. Et al. v. Compagnie des Bauxites de Guinea, No. 81-440 argued on March 2, 1982 and decid-

ed on June 1, 1982, that to continue to allow the Defendants to petti-fog the issue and to seek a dismissal because they did not know what was going on is purely a miscarriage of any of the rules that have been set up to safeguard such action."

In this action, this petitioner sought to correct the records and to make the record speak the truth and in this cause the respondents also became deaf, dumb, and mute, and the end result was the finished product of that Court. Although seven judges concurred, they only sent me a copy of the dismissal without any judges' signatures, a denial of due process of law. (See Appendix D.)

Common Pleas Court Judge Kennedy on July 29, 1981 ruled and had some form of affidavit sent to the Supreme Court of Ohio with regards to case 80-CIV-1000 and a motion to add 82-CIV-695 was discussed at this time. The papers were forwarded to the Supreme Court of Ohio to make a determination as to his jurisdiction byt te matter had already been determined prior to this by

Judge Bettis and Attorney Smith, who agreed that an outside judge was to be had. This was done after Attorney Smith failed to file an appeal for this petitioner due to the lack of a transcript or notes for the July 29, 1981 hearing in case 80-CIV-1000.

That the events that transpired on July 29 through October 15, 1981 will be the main thrust of this petitioner's arguments of jurisdiction. We now turn to Ohio Juror 3d § 17 & 59 where we see "that there is only one common pleas court in any county of the State of Ohio." And that further, "there is only one common pleas court regardless of how many judges sit on the bench." Therefore, the dismissal of the Court by Judge Bettis and the subsequent granting of an outside judge further encompasses our belief that the actions of the respondents when they sought their motion for Deposition was in a foreign jurisdiction and the subsequent use of Rule 37D must now be held null and void. The State of Ohio must again be looked at in the context of being on a fishing expedition so as to try to gain

control of this petitioner with regards to the cause at hand. To further argue our cause we once again cite the case of I.D. at page 15, Ins. Corp. of Ireland, Ltd., Et al. pages 45-56 ".. with respect to personal jurisdiction. The requirement that a court have personal jurisdicition flows not from Art. III but from the Due Process Clause. The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty. Thus, the test for personal jurisdiction requires that the 'maintenance of suit...not offend traditional notions of fair play and substantial justice.' International Shoe v. Washington, 326 U.S. 310, 316 (1945).

The respondent has elaborated on the fact that this petitioner failed to comply with Rule 37(D), when in fact, the above mentioned case itself clearly lays the foundation for personal jurisdiction. To have complied with that order would have been "judicial suicide." For what

would have prevented the respondents, who have knowingly destroyed the truth and manufactured evidence, from threatening and intimidating this petitioner and from enlarging upon any facts given at such Deposition inasmuch as this petitioner would have been outnumbered 6-1, with no protection of a court.

The failure of the Common Pleas and Ohio Supreme Court once again became evident to this Pro Se petitioner in that they refused/ignored to address the matter that was supposed to be sent to them on July 29, 1981 by the Clerk of Courts, Carl Stacey resulting in my personal trip to the Ohio Supreme Court on October 6, 1981 which led to the findings that no papers had been forwarded from the inferior court, once again presents a question of the denial of due process of law. Petitioner further argues Hammond Packing Co., v. Arkansas, 212 U.S. 322 (1909) at page 45-57 that "because a party need not obey the orders of a court until it is established that the court has personal jurisdiction over the party. If there is no obligation to

obey a judicial order, a sanction cannot be applied for the failure to comply. Until the court has established personal jurisdiction, moreover, any assertion of judicial power over the party violates due process." Going further we find, "There is no thing in the Rule 37 to suggest that it intended to confer a grant of personal jurisdiction." That realizing the context of this decision was based promarily on Federal Law where constitutional rights are concerned, the Federal interpation should prevail in a cause for due process. Further support of the arguments on denial of due process of law is supported by the hearing of March 28, 1983 before Judge David T. Matia. At this hearing this petitioner approached all attorneys to seek time so as to interview a Counselor in Columbus about defending this petitioner, to which all agreed. In a telephone conversation recorded with consent, to Judge Matia this petitioner was told, after some discussion, that the hearing was to be held as scheduled on March 28, 1983 and to be in court without fail. This petitioner

appeared Pro Se., and the result of some six years of litigation with no results to correct any of the actions or errors of these courts left this petitioner very little hope. That after presenting arguments of two cases combined into one cause I received an opinion of two separate causes that being on the 60B and a Suit for Damages and a combined opinion. The Seventh District Court of Appeals, in their opinion, failed to recognize and construed after 3½ years that two causes were before it and although this petitioner did not separate these causes the Appellate Court, in its opinion, accused this petitioner of not perfecting an appeal on a 60B Motion, when indeed throughout the course of this cause and by the brief submitted along with the assignment of errors, it makes statements time and again to the 60B as well as the suit for damages and the efforts of the judges of the Court of Appeals can be ascertained by the way oral arguments were handled by tese three judges. Two witnesses and myself attended the arguments. Now if

you can picture three judges, one presiding, and two sitting, in a court of law. The then presiding Judge O'Neil asked a direct question of this petitioner. O'Neil - "Mr. Graham, were you issued a 14 day demand for deposition?" Graham- "No Sir." O'Neil to Attorney Pfau "Bill, is that correct?" Pfau-"Yes, Sir." O'Neil-"Just who in the hell does he think he is?(In referrence to Judge Matia) That's all I want to hear. Let's to to dinner." Upon Attorney Pfau's answer to the Court, the sitting Judge Cox, looked upward and then threw the pencil he had up into the air and then caught it. He sat there just shaking his head in utter disbelief.

The actions of the judges, after $3\frac{1}{2}$ years of pondering, issued the opinion of the court which has lead this petitioner to believe that the statement and opinion of now presiding Judge Cox to the Youngstown Vindicator was the foregone conclusion with regards to the decision on this petitioners' cause. That statement being "If it looks like a skunk, walks like a skunk and smells like a skunk, it must be a

skunk!"

This petitioner believes that the opinion of the court of appeals and the actions of the respondents leads true thoughts into denial of due process of law totally, and the cause for suit under Title 42 § 1983 is justifiable. The questions presented for review to this Supreme Court in this writ, should leave this court with some conclusions as to the actions not only of former Judge Bettis but also to the actions of those people who are ascertained and to protect the rights of an individual. In support of regarding these persons as "pettifogging shysters" I quote Bailey v Kalamazoo Pub. Co. Mich. 251,256 "This combination of epithets every lawyer and citizen knows belongs to none but unscrupulous practitioners who disgrace their profession by doing mean work, and resort to sharp practice to do it." In Zarchone v. Perry, 572 F.D. 2d, 52-57 we see the results of another cause where a judge usurped his authority handled and ousted from office. The actions of former Judge Perry with the handcuffing and berating of the coffee vendor

Zarchone, bears similar actions with the former Judge Bettis' actions towards this petitioner, and his counsel at the May 29, 1981 hearing. The actions of Judge Bettis at that hearing led to the sentencing of 10 days in jail for direct contempt of court for this petitioner, and his counsel was twice warned of being on the fine line of contempt of court. After the petitioner was led from the court by the Bailiff, the Judge further berated the late Attorney Dilley and told him to never appear in his courtroom agin. This type of behavior leds to serious consideration that the cause of action and destrection of evidence to prevent an appeal once again denies due process of law. The results that followed both in common pleas and Appellate court leaves this petitioner with a question of whether Judge Bettis absent of a trial by jury is immune from his actions through judicial immunity? And also whether his statements made in his fifth defense in that any communication he made to this petitioner's counsel, who is an officer of the Court, for which the plaintiff now complains about were privileged.

In 7 Am Jur 2d § 171, 172, 175 is found the fact that an attorney is liable if he is negligent in preparing, filing, and servings pleadings essential to the client's cause. A lawyer retained by a client for the sole purpose of defense, acting as an officer of the ccurt is subject to the laws his code of ethics to support his client's cause without respect tc the various individuals involed and the taking of money constitutes contract and a bond for the performance of this lawyer. Attorney Smith failed to comply with every standard required of him, in that he accepted this petitioner's cause and monies and then saw fit to copitualte with Judge Bettis and frivor away this petitioner's chances of an appeal, again denying due process of law.

On the other hand, Respondents Dickey and Zahorsky saw fit to acquire a judgment lien on property already in respondent's former married name with this petitioner which is not allowed in any case law stated by this petitioner, for in Jones v. Hall (1941) 15 SE 2d 108

(See page 4 of I.P.10)provides that "a'judgment lien' is not a proprietory right in the lands of the judgment debtor but is merely a right to levy on such lands for the purpose of satisfing the judgment to the exclusion or of any right which may have accrued to others since the attachment of the lien." Liens are property rights and cannot be deversed as a matter of procedure. But on the other hand, liens do not protect or grant somebody the right to hold property in their name when they have only been given a lien. Then when the cause was brought before the Appellate Court the same respondents failed to answer their brief but yet sought relief from the cause at hand.

This petitioner has argued much case law, as is apparent in I. P. -10, which has seemed to be to avail inasmuch as the inferior courts, that have had this cause, have appearred to completely ignore even Federal case law. This informational packet has been supplied to this Court as foregone proof of this petitioner's efforts to have this cause rectified and to

obtain the due process of law due any citizen.

Furthermore, it is found in Picking v.Penn R., 152 F 2d 753, that "where a plaintiff pleads pro se in a suit for protection of civil rights, the court should endeavor to construe plaintiff's pleading without regard for technicalities." Further on we find, "misuse of power by virtue of state law and made possible only because wrongdoer is clothed with authority of state law, is action taken 'under color of any statute' within statute making one who, acting under color of any statute, subjects any citizen to deprivation of any rights, priviledges, or immunities secured by Federal Constitution and laws liable to party injured in action at law. 8 U.S.C.A. § 42. It is the desire of this petitioner to make available to this Court all information pertinent to the cause now before it.

CCNCLUSION

Petitioner, Alvie B. Graham, prays that a writ of certioria shall issue from this court in the above captioned case to preserve and protect the rights of this petitioner. Further in conclusion, this petitioner has offered throughout the course of this litigation many solutions. But due to the Pro Se statis that has been forced upon me, first in 1964 and again in 1981, by the respondents and the failure of the judicial system to act upon any of the motions except to let them hang without an opinion due to the Pro Se statis further denies fair play and substantial justice. Haines v. Kerner, 427 FD 2d 71, and Pickens v. Penn. RailroadI.D. at page , clearly adjucates the rights of a Pro Se litigant. The courts continue to deny these rights bringing cause, under the Constitution, for the denial of due process. My property has been held "hostage" for some eight years under a judgment which is contrary to law.

The amount of expense in fighting this lawsuit could have satisfied the Judgment Lien many times. The anguish and health problems of this Petitioner demands restitution and compensation of some form. For it is written in Habakkuk 1:4, "Therefore the law is slacked, and judgment doth never go forth; for the wicked doth compass about the righteous; therefore wrong judgment proceedth."

Respectfully submitted,

_____

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APPENDIX A

Entry of the Ohio Supreme Court in Alvie B. Graham v. J. Warren Bettis, Judge, et al., (No. 88-754, August 3, 1988)

APPENDIX A

THE SUPREME COURTOF OHIO

COLUMBUS

1988 TERM

To wit: August 3, 1988

Alvie B. Graham

Appellant

v.

J. Warren Bettis, Judge

et al.,

Appellees

Case No. 88-754

E N T R Y

Upon consideration of the motion for an order directing the Court of Appeals for Columbiana County to certify its record, it is ordered by the Court that said motion is overruled.

Motion Fee, $20.00, paid by Alvie B. Graham.

Thomas J. Moyer

Chief Justice

I, Marcia J. Mengel, Clerk of the Supreme Court of Ohio, do hereby certify that the

foregoing order was correctly copied from the records of said Court, to wit, from the Journal of this Court.

in witness whereof, I have hereunto subscribed my name and affixed the seal of said Supreme Court, on this 3rd day of August, 1988.

Marcia J. Mengel Clerk

_____DEPUTY
Rita A. Jackson

THE SUPREME COURT OF OHIO

Style: Alvie B. Graham v. J. Warren Bettis, Judge, et. al.

Case No: 88-0754

Case Type: Mot to Certify Record

DATE	ACTION
04-26-88	Notice of appeal filed Filed by Alvie B. Graham
	Request for extentsion of time $2 fee by Alvie B. Graham #2456 memo in support due 5-27-88 GRANTED 4-26-88
05-27-88	Memo in support of juris filed
06-03-88	Return receipt received Postage $3.00
06-06-88	Return receipt received Postage $3.00
06-07-88	Return receipt received Postage $3.00

06-16-88	Memo opp juris filed
	Eugene Smith
06-22-88	Memo opp juris filed
	Judge Bettis & Carl Stacey
07-11-88	Reply memo filed
07-27-88	Scheduled for jurisdictional question
	OVERRULED 08-03-88
08-17-88	Cert copy of entry sent to clerk

APPENDIX B

Opinion of the Appellate Court of Ohio in Alvie B. Graham v. Judge J. Warren Bettis, et al., (Seventh District, Columbiana County, February 29, 1988)

APPENDIX B

February 29, 1988

84-C-51

IN THE COURT OF APPEALS, SEVENTH DISTRICT

STATE OF OHIO, COLUMBIANA COUNTY

	APPEAL FROM THE
ALVIE B. GRAHAM	COMMON PLEAS COURT
PLAINTIFF-APPELLANT	COLUMBIANA COUNTY
-vs-	
JUDGE J. WARREN BETTIS	HONORABLE DAVID T.
ET. AL.	MATIA, JUDGE, SITTING
DEFENDANTS-APPELLEES	BY ASSIGNMENT OF THE
	SUPREME COURT, STATE
	OF OHIO

CHARACTER OF	CIVIL APPEAL FROM THE
PROCEEDINGS:	COMMON PLEAS COURT,
	CASE NO. 82-CIV-1000

JUDGMENT: Affirmed

APPEARANCES:

For Plaintiff-Appellant:

Alvie B. Graham, Pro Se
31987 Georgetown Rd.
Salem, Ohio 44460

For Defendants-Appellees:

Paul D. Eklund
816 Engineers Bldg.
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Robert Hartford, Jr.
91 w. Taggart St.
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William E. Pfau, III
900 City Centre One
Youngstown, Ohio 44501

Hon. Edward A. Cox
Hon. Joseph E. O'Neill
Hon. Joseph Donofrio, JJ.

FOOTNOTES

[1] Defendants-Appellees Larry M. Dickey, Bertha Zahorsky take no part in this appeal.

[2] The text of suit 82-CIV-695, Jury Demand, follow: The suit arrises out of the May 29, 1981 hearing, the kangaroo court of Judge J. Warren Bettis, in which all notes of the proceedings were destroyed to prevent an appeal in which Attorney Eugene Smith was hired to perfect an appeal, and failed to do so.

The 60B Motion for relief from judgment was also filed under 80-CIV-1000 on or about the same time, May 27, 1982, with a request that all hearings on suit for damages be held in abeyance until such time that the facts were ascertained as to the hearing on May 29, 1981. The text of the hearing of July 29, 1982 stated as Case 80-CIV-1000 before the Honorable Judge Richard D. Kennedy, transcript of procedings follows - Opinion of Court of Alleals.

Defendant J. Warren Bettis is being sued in the sum of Three Million Dollars ($3,000,000.) for his participation in Plaintiffs' suit, Case No. 80-CIV-1000. He is hereby charged with defamation of character, bias and prejudice, violation of his cannon of ethics and oath of office, Fraud and Fraud upon the Court, violation of Ohio Revised Code Section 149.43 on Public Records, intent of unjust incarceration, intentional physical and mental anguish, unnecessary and unjust financial difficulties and malfeasance of office, stemming from his involvment in the above captioned case.

The Clerk of Courts, Carl Stacey is being sued in the sum of Two Hundred Thousand Dollars ($200,000.) for his violation of Ohio Revised Code Section 149.43 on Public Records, his failure to perform his duties and violation of his oath of office, in case no. 80-CIV-1000.

That Attorney Larry Dickey is being sued in the sum of Two Million Dollars ($2,000,000.) for

menancing a hardship, Fraud and Fraud upon the court, violation of his oath of office and ethics and violation of a letter of July 24, 1981, which in accordance to Old English Law is a contract (copy attached) while acting as legal counsel for Bertha I. Graham in Case No. 80-CIV-1000.

That Bertha I. (Graham) Zahorsky is being sued in the sum of Fifty-Thousand Dollars ($50,000.) for false accusation of intentianal harm, intentional perjury, contempt of court, menancing a hardship and physical and mental anguish perpetrated by her in the suit against the Plaintiff in Case No. 80-CIV-1000.

That Attorney Eugene Smith is being sued in the sum of Two-Hundred Thousand Dollars ($200,000.) for his breech of contract, violation of his oath of office and conspiracy to deprive the due process of law while acting as legal counsel for this Plaintiff.

Opinion of Court of Appeals delivered by Judge Cox, P. J.

Plaintiff-appellant, Alvie B. Graham, has timely appealed a judgment of the Columbiana County Court of Common Pleas which dismissed his complaint against defendants-appellees, Judge J. Warren Bettis, et al pursuant to the sanctions allowed for by Rule 37(D) of the Ohio Rules of Civil Procedure. Being mindful of appellant's pro se status in the instant case, we have subjected the records of the cases subjudice to successive reviews. In doing so, we have repeatedly scrutinized appellant's brief on appeal to flush out every colorable argumet he has attempted to present to this court so that we may fully address his contentions. Nonetheless, and for the following reasons, we must overrule what we perceive to be appellant's basic assignments of error and affirm the judgment of the trial court.

The record discloses the following.

In July of 1980, Bertha (Graham) Zahorsky

instituted a divorce action against appellant in the Columbiana County Court of Common Pleas (case no. 80 CIV 1000). On December 17, 1980, a decree of divorce was granted to Miss Zahorsky. On April 30, 1981, appellant filed a motion for modification of the divorce decree. On May 21, 1981, appellant's former wife, Miss Zahorsky, also filed a motion for modification. The trial court conducted a hearing on both parties' motions on May 29, 1981 and during the hearing on these motions, it found appellant in direct contempt of court and sentenced him to ten days in the county jail. There is nothing in the record to indicate that appellant appealed the trial court's finding of contempt. Thereafter, on August 18, 1981, the trial court issued its judgment entry sustaining Miss Zahorsky's motion for modification and overruling appellant's motion for modification. Appellant did not appeal this judgment of the court.

The next record entry of consequece was that of May 19, 1982, appellant filed a Civ.

R. 60(B) motion for relief from judgment. This motion was directed to both the November 4, 1980 divorce hearing and the May 29, 1981 hearings on the parties' respective motions for modification as well as various frauds alleged by appellant. The record also discloses both before and subsequent to appellant's having filed his 60(B) motion for relief, he also filed various motions for a change of venue and successive affidavits of prejudice against several judges who were assigned to hear the motion.

Inexplicably,and before appellant's motion in case no. 80 CIV 1000 was ruled on, on November 30, 1984, he filed a pleading captioned as a "Notice of Intent to Appeal and Memorandum." Appellant's memorandum therein was essentially a series of allegations against the appellees which were also embodied within his complaint for damages against them in a separate action he filed against appellees in the Columbiana Ccunty Court of Common Pleas (case no. 82CIV 695).

While we have attempted to give due

deference and consideration to the fact that appellant has proceeded pro se in this matter, we nonetheless must hold appellant to the standards applicable to any counsel of record who represents a party. Accordingly, we must find that appellant has abandoned his motion for relief from judgment in case no. 80 CIV 1000. In filing his intent to appeal from that case he deprived the lower court of any jurisdiction to proceed in the matter. Appellant cannot now complain to this court of various delays in that particular case as such delays were occasioned by his successive motions attacking the venue of that court and his various affidavits of prejudice against several judges who were assigned to hear the case. Moreover, as the record clearly discloses there was no final order from which an appeal could be taken in case no. 80 CIV 1000, this court is without jurisdiction to entertain appellant's appeal from that case and we, therefore, dismiss that appeal.

We next turn to a considereation of appellant's appeal of the dismissal of his separate action against appellees for damages in Columbiana County Common Pleas Court case no. 82 CIV 695.

On May 27, 1982, appellant instituted this suit for damages against the appellees within. Appellant alleged that the judge, the clerk of courts, his former wife, his former wife's attorney and his own former attorney were guilty of various frauds, breaches of duty and malpractice. All of these allegations were based upon what appellant perceived to be violations of his various rights in the divorce case which preceded it, case no. 80 CIV 1000. Appellees timely answered and attached to their answer was a notice of deposition for the taking of appellant's deposition. Thereafter, appellees' counsel rescheduled appellant's deposition, at his requests, on three different occasions and attempted to accommodate appellant both as to date, time and location for the depositions.

On August 30, 1982, the final date for

appellant's deposition, counsel for the appellees waited for over one-half hour for appellant to appear at the designated place and time; a court reporter was also in attendance. While appellant had been properly noticed for all the scheduled depositions including this last one, appellant failed to appear. However, on August 25, 1982, appellant had filed what he captioned as a "Motion to Vacate Discovery Due to Lack of Court." This pleading essentially again attacked the jurisdiction of the court and the qualification of the then presiding judge to hear the matter.

On September 26, 1982, counsel for appellees, Bettis and Stacey, filed a motion for immediate sanctions pursuant to Civ. R. 37(D), for appellant's willful failure to appear for his own deposition. These appellees also filed the short transcript of the August 30, 1982 deposition which appellant failed to attend. Thereafter, the remaining appellees filed similar motions for sanctions.

Subsequent to this, the Ohio Supreme

Court appointed a judge of the Common Pleas Court of Cuyahoga County to hear this matter. That judge conducted an evidentiary hearing on appellees' motions for sanctions on March 28, 1983. Appellant attended this hearing and argued in opposition to appellees' motions.

By judgment entry of November 5, 1984, the lower court found that appellant, after receiving notice of depositions, unjustifiably and willfully refused to attend his own deposition after it had been three times rescheduled by appellees' counsel at appellant's request. The court further found the appellees incurred substantial expense and attorneys' fees and costs as a result of appellant's failure to attend and determined that appellant's underlying claims against appellees were meritless and subject to judicial immunity as well as other defenses. Accordingly, the trial court dismissed appellant's complaint with prejudice and ordered appellant to pay a sum certain to each of appellees' counsel in prosecuting the motion for sanctions and the court reporter's

expenses. Appellant filed a timely notice of appeal from this judgment entry on November 30, 1984.

In reviewing the record of the case sub judice, appellant's brief on appeal and his points on oral argument to this court, we find only two questions presented for our review: whether the trial court had jurisdiction to grant the sanctions and whether those sanctions were proper. As the lower court's dismissal with prejudice was based upon appellees' motions pursuant to Civ. R. 37(D) we cannot reach the merit or lack of merit of appellant's case as suggested by the lower court's obiter dictum regarding judicial immunity and other defenses.

In addressing the issue of whether or not the lower court had jurisdiction we must answer in the affirmative.

The record clearly discloses the Columbiana County Court of Common Pleas had jurisdiction over the subject matter and all the parties. Moreover, and despite appellant's motions and allegations to the contrary, the instant matter

was also properly venued in Columbiana County. Apparently, appellant has misled himself into believing that if various judges of that court excuse themselves from hearing the case or are disqualified from hearing the case, jurisdiction with that court fails. This is simply not the case.

The jurisdiction of the court follows the court, not the judges assigned to that court. Were it otherwise, appellant's entire case would have been subject to an immediate dismissal as having been filed with the wrong court. Accordingly, and for all the reasons stated, we find that both jurisdiction and venue of the Common Pleas Court of Columbiana County to hear the instant case was proper and we, therefore, overrule appellant's contention to the contrary.

We next address the issue of whether or not the trial court properly imposed sanctions of dismissal with prejudice and the award of costs and attorneys' fees against appellant pursuant to Civ. R. 37(D).

Civ. R. 37(D) states in pertinent part:

> "If a party*** fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice,***the court in which the action is pending on motion and notice may make such orders in regard to the failure as are just, and among others it may take any action authorized under subsections (a), (b), and (c) of subdivision (B)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act*** to pay the reasonable expenses, including attorney's fees, caused by the failure (to attend)****.
>
> "The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(C)."

Accordingly, our review focuses on whether or not the court abused its discretion in granting the relief requested by appellees and imposing the sanctions of dismissal against appellant.

> "Civ. R. 37(D) provides a one-step method for immediate imposition of sanctions when a party fails to appear at a properly noticed deposition. The method for obtaining an advance court determination to avoid the imposition of immediate sanctions is to move for a protective order, pursuant to Civ. R. 26(C), before the time for compliance occurs." Dafco, Inc. v.

Reynolds (1983). 9 Ohio App. 3d 4 at paragraph 1 of the syllabus.

Clearly then the lower court had authority to determine whether or not to impose the ultimate sanctions of dismissal in this case. Additionally, we find appellant's purported protective order, filed just five days before the last scheduled deposition of him, did not deprive the trial court of jurisdiction to hear the motion for sanctions.

In the first instance and as we have already noted, appellant's purported motion for protective order was again nothing more than an assualt upon the jurisdiction of the court and the qualifications of the particular judges. Moreover, appellant failed to obtain an advance court determination by filing his purported motion immediately prior to the final scheduled date for deposition of him. Finally, the record clearly discloses that the trial court did not grant appellees' motion for sanctions and dismiss appellant's complaint until November 5, 1984, and only after first having granted an evidentiary

hearing on the motions to all parties on March 28, 1983. In sum, we believe the record clearly discloses the trial court gave the appellant all that he was due. Even if appellant had not filed his purported protective order, the record would otherwise support the trial court's judgment without an evidentiary hearing.

Our duty as a reviewing court is to presume the regularity and legality of the proceedings below. It is appellant's burden to demonstrate not only that error intervened but that such error affected a substantial right. Where questions of fact and law are contested in an evidentiary setting it is for the trial court to weigh the questions of fact in reaching its determination. Our duty then is to defer to the trial court's judgment in that regard where there is any competent credible evidence to support that judgment.

Upon the entire record of the case sub judice we can find no abuse of discretion by the trial court in its sustaining appellees' motions for sanctions against appellant.

While the sanction of a dismissal with prejudice may be severe it is nonetheless provided for under Civ. R. 37(D) and by reference to Civ. R. 37 (B) (2) (c). Even absent the trial court's specific finding that appellant unjustifiably and willfully refused to attend his own deposition, the record of the case sub judice clearly evidences such an unjustifiable and willful refusal by appellant.

Secondly, had the trial court declined to impose any sanctions against appellant, it was nonetheless mandated to tax expenses, including attorneys' fees incurred by the appellees, against appellant unless the trial court expressly found appellant's failure to appear was substantially justified. Bilikam v. Bilikam (1982), 2 Ohio App. 3d 300; Rogers v. Kazee (1983),10 Ohio App. 3d 139.

Accordingly, and for all the reasons stated, appellant's assignments of error must be overruled and the judgment of the trial court in all respects affirmed.

O'Neill, J. concurs.

Donofrio, J., concurs

APPROVED:

_____

Edward A. Cox, Presiding

Judge

APPENDIX C

Transcript of Proceedings in the Court of Common Pleas in Bertha I. Graham v. Alvie B. Graham, (No. 80-CIV-1000, Columbiana County, Ohio, July 29, 1982)

APPENDIX C

TRANSCRIPT OF PROCEEDINGS

OF

July 29th, 1982

THE HONORABLE RICHARD D. KENNEDY, JUDGE.

Be it remembered, that, heretofore, to-wit: On the 29th day of July, 1982, the same being one of the judicial days of the said ccurt, this cause came on for trial in Court-room #1 in said County and State before the Honorable Richard D. Kennedy, Judge, and was continued thereafter as hereinafter noted.

Mr. James Hartford Appeared on behalf of Plaintiff

Mr. Alvie B. Graham Appeared Pro Se

WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD:

MR. GRAHAM: I have a person who takes notes for me.

THE COURT: Pardon?

MR. GRAHAM: I have a person who takes notes for me.

THE COURT: Well, let me call the case and

I'll explain this.

Alright, the next case is BERTHA I. GRAHAM VS. ALVIE B. GRAHAM, #80/CIV/1000. Present in Court is Attorney James Hartford. Now, you're representing Bertha Graham?

Mr. Hartford: Correct, your Honor. Mr. Dickey is indisposed today.

THE COURT: And the Defendant, Alvie B. Graham is also present.

Now, what is your name, please?

MRS. CLARKSON: Hum?

THE COURT: What is your name?

MRS. CLARKSON: Mrs. Clarkson.

THE COURT: Are you an Attorney?

MRS. CLARKSON: No, sir. I'm just taking notes for Mr. Graham.

THE COURT: Very well, you'll have to sit in the public section.

MRS. CLARKSON: Alright.

THE COURT: Only Attorneys are permitted before the Bar or parties to lawsuits.

MRS CLARKSON: Alright.

THE COURT: You may sit back there, back in

the public section.

(Mrs. Clarkson goes directly behind the bar of the Courtroom.)

THE COURT: Now, in this case there have been several Motions filed. A first Motion was filed on May 19th, 1982, and that motion is styled Motion to Disqualify Judges; and in the first paragraph of that Motion, it states that Judge Kennedy be disqualified.

The next Motion was filed on May 9th, 1982, which is styled a Motion for Change of Venue.

Then, on June 28th there's filed a Request to Amend the change of Venue and Motion to Disqualify.

Then, on July 29th, 1982, an additional document was filed styled Amended Change of Venue, whatever that is.

Now, Mr. Graham, if you want to be heard, would you please stand at the Podium, so it can be tran - so the record can be made. You tell me whatever you want to tell me.

MR. ALVIE GRAHAM: Your Honor, in this case I filed several requests to

have a change of venue, and I filed an additional paper today, as Judge Bettis on October the 6th, 1981, or thereabouts, disqualified this Court and himself from hearing any further Motions on this case. I have no objections, your Honor, as to the Court performing the duties, but I feel that, being as this case is as complicated as it isnow, that it would be unfair to you and be unfair to me to have you sit in judgment; and, therefore, I ask with these things in mind that you consider that we can have an outside Judge.

It is also known by me, you Honor, that you are involved in several parts of litigation with people whom I associate with as a Pro Se litigant.

With all due respect to this Court, this is a very demeaning thing for me to have to be in this Court at this time, but as there seems to be no other way, that I have tried in several cases to get consel to represent me, and it has not came out that way. Therefore, I have to act on my own behalf; and since Judge Kennedy-

or Judge Bettis has disqualified this Court, under the Rules of Court and the Ohio Law, that even though there is two Judges in the Court, that the Court remains one Court, and the Court has already been disqualified.

THE COURT: Okay?

MR. GRAHAM Yes.

THE COURT: Alright, Mr. Hartford.

MR. HARTFORD: Your Honor, on its face, I would object---

COURT REPORTER: Mr. Hartford--

THE COURT Mr. Hartford--

COURT REPORTER: --please, would you use the--

MR. HARTFORD: --if it please the Court, I would object to the three motions filed on May 19, the Motion for Change of Venue, the Motion to Disqualif, and in addition, the Motion to Vacate the Court's Order, under Rule 60-B, on behalf of - of the Plaintiff in this matter, Bertha A. Graham, now or I. Graham, Now Zahorsky; and I would also indicate- I believe in his statement Mr. Graham indicated there were additional pleadings filed

today - ah- my file does not indicate a receipt of any copy of any additional pleadings.

THE COURT: Well, first of all, apparently, the-the thrust of all these Motions that were filed-and I did not mention the Motion to Vacate the Judgment-the Motion to Vacate the Judgment brought about, apparently, the voluntary disqualification of Judge Bettis. The Motion to Vacate the Judgment, apparently, is the main thrust of the Plaintiff's seeking all this additional relief, and that, apparently, is what will some time be heard, whether or not hte judgment should be vacated.

Now, he has filed, apparently, along with this Motion some form of Affidavits, which, frankly, are not too clear, but I guess on the face of them they ask for the disqualification of Judge Kennedy.

Now, first of all, going to the matters of the Motion for Change of Venue, in 47 Ohio Appellate 2d, Page 28, CUYAHOGA COUNTY BOARD OF MENTAL RETARDATION VS. THE ASSOCIATION OF

CUYAHOGA COUNTY TEACHERS, THE Court in that case held, and I quote:

> "When an affidavit of disqualification has been properly filed with the clerk of courts, a trial judge is without authority to proceed with the case or to enter judgment therein, until the Chief Justice of the Ohio Supreme Court has passed upon the issue of disqualification."

Therefore, this Court has no jurisdiction to hear any motions relative to change of venue or to vacate judgment until the Chief Justice has passed upon the matter of the Court's disqualification. When - the statute, 2701.03 provides:

> ***On the filing of an affidavit by any party to the cause or matter *** setting forth the fact of the interest, bias, prejudice or disqualification, the clerk of the court of common pleas shall enter the fact of the filing on the trial docket in the cause and forthwith notify the Chief Justice of the Supreme Court. The Chief Justice, or nay judge of the Supreme Court designated***shall pass upon the disqualificaton.***"
>
> If the Supreme Court or any Judge finds that the Judge is disqualified, the Court of Common Pleas of which the disqualified Judge is a member, shall assign the cause or matter to another judge.

Therefore, it's quite clear under the law

that - and I have checked with the Clerk of Courts, the Supreme Court Chief Justice has been notified, and he has not apparently made a determination as to whether or not I am disqualified, so until such time as he makes a determination of disqualification, no further action can be taken on any Motions in this case.

So, therefore, that concludes the hearing.

MR. HARTFURD: Thank you, your Honor.

the court; Okay, you can put on the docket;

This matter came on to be heard on a Motion for a Change of Venue. Plaintiff's counsel, Mr. Hartford, appeared; the Defendant Graham appeared.

The Court Finds that there has been filed with the Clerk of Courts an Affidavit of prejudice of disqualification against Judge Kennedy, and that, therefore, until the Chief Justice of the Supreme Court determines whether or not Judge Kennedy is disqualified and assigns another Judge to hear the matter, this Court has no jurisdiction to hear any motions in

this case.

MR. HARTFORD: Thank you.

WHEREUPON, COURT WAS ADJOURNED.

CERTIFICATE OF COURT REPORTER

I, Virginia M. Pastore, Official Court Reporter in and for the Common Please Court of Columbiana County, Ohio, Do hereby certify that the foregoing is a complete and accurate transcript of the proceedings had at and during the trial of the within entitled cause tried in said Court on July 29th, 1982, consisting of eight pages, and was transcribed by me from the official recording tapes and shorthand notes used at said trial by me.

APPENDIX D

Decision of the Ohio Supreme Court in Alvie B. Graham v. J. Warren Bettis, Judge, et al., (No. 82-1517, April 20, 1983)

THE STATE OF OHIO)
)
City of Columbus)

1983 TERM

The State of Ohio, ex rel. Alvie B. Graham, Petitioner, vs. J. Warren Bettis, Judge, et al., Respondents.

To wit: April 20, 1983

No. 82-1517

IN MANDAMUS ON MOTION TO DISMISS

This cause originated in this court on the filing of a mandamus and was considered in the manner prescribed by law. On consideration thereof, it is ordered by the court that the motion to dismiss be sustained and the cause dismissed.

FOR YOUR
INFORMATION
ONLY
NOT FOR FILING

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 20th day of April, 1983

James Wm. Kelly Clerk

SUPREME COURT'S ANNOUNCEMENTS

82-1517. State of Ohio, ex rel. Alvie B. Graham, Petitioner, v. J. Warren Bettis, Judge, et al., Respondents
In Mandamus.
On motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Celebrezze, C.J., W. Brown, Locher, Holmes, C. Brown and J.P. Celebrezze,J.J., concur.
Sweeney, J., not participating.

82-1535. Samuel Emerson Fisher, Petitioner, v. Lou Clark, Sheriff, Respondents.
In Habeas Corpus.
On Motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Celebrezze, C.J., W. Brown, Sweeney, Locher, Holmes, C. Brown and J.P. Celebrezze, J.J., concur.

83-32. State of Ohio, ex rel. William E. Bochanon, Petitioner, v. Court of Common Pleas of Warren County, Respondent.
In Mandamus.
On motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Celebrezze, C.J., W. Brown, Sweeney, Locher, Holmes, C. Brown and J.P. Celebrezze, J.J., concur.

83-71. Jessie K. Lee, Petitioner, v. Ted Engle, Supt., Respondent.
In Habeas Corpus.
On motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Celebrezze, C.J., W. Brown, Sweeney, Locher, Holmes, C. Brown and J.P. Celebrezze, J.J., concur.

83-116. Larry Calloway, Petitioner, v. Ted Engle, Supt., Respondent.
In Habeas Corpus.
On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Celebrezze, C.J., W. Brown, Sweeney, Locher, Holmes, C. Brown and J.P. Celebrezze, J.J., concur.

(2)

Supreme Court, U.S.
FILED
FEB 14 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1192

In The

Supreme Court of the United States

October Term, 1988

ALVIE B. GRAHAM,

Petitioner,

vs.

J. WARREN BETTIS, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE OHIO SUPREME COURT

BRIEF OF RESPONDENTS J. WARREN BETTIS AND CARL STACEY IN OPPOSITION

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or call collect (402) 342-2831

16 pp

QUESTIONS PRESENTED

Respondents Judge J. Warren Bettis and Clerk of Courts Carl Stacey, believe that the questions Petitioner is attempting to place before this Court are as follows:

1. Whether the Court of Common Pleas for Columbiana County, Ohio, had jurisdiction over a case filed therein so as to entertain a motion for and grant sanctions against a plaintiff for failing to attend his own properly noticed deposition, where the judges of that court had disqualified themselves from hearing the case at the time the noticed deposition was to take place?

2. Whether a state appellate court has jurisdiction where, under state appellate procedure, there must be a final appealable order from which an appeal can be taken and no order was issued by the lower court on a pending motion for relief from judgment?

PARTIES TO THE PROCEEDING IN THE OHIO SUPREME COURT AND THE SEVENTH DISTRICT COURT OF APPEALS OF OHIO

1. Alvie Graham
   Plaintiff-Appellant
2. J. Warren Bettis, Judge of the Columbiana County, Ohio, Court of Common Pleas
   Defendant-Appellee
3. Carl Stacey, Clerk of Courts of the Columbiana County, Ohio, Court of Common Pleas
   Defendant-Appellee
4. Larry Dickey, Esq.
   Defendant-Appellee
5. Eugene Smith, Esq.
   Defendant-Appellee
6. Bertha I. Zahorsky
   Defendant-Appellee

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OPINIONS BELOW

The Ohio Supreme Court overruled Petitioner's motion for an order certifying the record of the Seventh District Court of Appeals of Ohio without opinion on August 3, 1988.

The Seventh District Court of Appeals of Ohio issued an unreported opinion overruling Petitioner's assignments of error and affirming the Common Pleas Court of Columbiana County, Ohio on March 8, 1988.

The Columbiana County, Ohio, Court of Common Pleas issued without opinion a Journal Entry filed November 4, 1984, granting Respondents' motion to dismiss and for sanctions.

———o———

JURISDICTION

Petitioner seeks review of the Opinion of the Seventh District Court of Appeals of Ohio dated March 8, 1988. (The Ohio Supreme Court overruled a motion to certify the record of the Seventh District Court of Appeals of Ohio on August 3, 1988.)

An application for extension of time within which to file a petition for a writ of certiorari was granted and this Court issued an order, dated October 28, 1988, extending the time to file the petition to December 31, 1988.

Petitioner erroneously cites 28 U.S.C. Section 1254 as conferring jurisdiction. The proper jurisdictional statute which Petitioner seeks to invoke is 28 U.S.C. Section 1257 (3). Respondents assert that jurisdiction does not lie in this Court for the reason that Petitioner failed to present federal questions in the state court proceedings below.

FEDERAL CONSTITUTIONAL PROVISIONS INVOLVED

The Petitioner claims to have raised questions involving title, right, immunities or privileges arising under:

1. The Fourteenth Amendment to the Constitution, Section 1, which states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. The Fourth Amendment to the Constitution, which states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

———o———

STATEMENT OF THE CASE

Petitioner is seeking to have this Court review the opinion of the Seventh District Court of Appeals of Ohio. (The Ohio Supreme Court overruled Petitioners' motion to certify the record and declined to exercise its discretionary jurisdiction to review the appellate decision.) The

Seventh District Court of Appeals issued an unreported opinion on two cases which were consolidated for review, both involving the Petitioner herein.

The first case involved was a case captioned *Bertha Graham v. Alvie Graham,* being case number 80-CIV-1000 filed in the Columbiana County, Ohio, Court of Common Pleas. This divorce action was filed in July, 1980, and in it, Respondent Judge Bettis, to whom the case had been assigned, issued a divorce decree on December 17, 1981. Cross-motions to modify the decree were filed. Judge Bettis issued an order of modification of the decree on August 18, 1981. Petitioner Graham filed a motion for relief from judgment under Ohio Rule of Civil Procedure 60(B) in May, 1982. Contemporaneously with that motion, he began filing a series of documents which purported to attack the jurisdiction and venue of the Columbiana County Court of Common Pleas and attempted to disqualify the individual judges of that court. Respondent Bettis subsequently disqualified himself. In May, 1982, Judge Kennedy, to whom the case had been transferred, ruled that since Graham had also filed a motion to disqualify Kennedy from hearing the case, he should not decide any motions pending in that case.

At this same time, Graham filed an action against Respondents Bettis, Stacey and others in a case captioned *Alvie B. Graham v. J. Warren Bettis, Judge, et al.,* being case number 82 CIV 695 in the Columbiana County, Ohio, Court of Common Pleas. The complaint attempted to allege fraud and malfeasance or breaches of statutory duties by Bettis and Stacey, and fraud and legal malpractice against Graham's former attorneys, Respondents

Dickey and Hartford, with respect to the actions of these individuals in the previously filed divorce action.

Respondents timely answered and immediately served upon Alvie Graham a Notice of Deposition to take Graham's deposition. Graham contacted the noticing counsel and requested a continuance, and counsel obliged. A second notice was sent for a later deposition date, and again Graham requested a continuance. A third notice was then sent on August 5, 1982, noticing Graham's deposition for August 30, 1982. On August 25, 1982, Graham filed a "Motion To Vacate Discovery Order" which read like a motion for a protective order. He never advised the noticing counsel of an intent not to appear for the deposition. Consequently, all defense counsel convened for the deposition on the date and at the time and place contained in the third notice. They waited for Petitioner and then recorded with the court reporter present the history of noticing the Petitioner and Petitioner's failure to appear.

On September 26, 1982, Respondents filed with the Court a motion for sanctions pursuant to Ohio Rule of Civil Procedure 37 because of Petitioner's willful refusal to attend his own deposition. Subsequently, a visiting judge was appointed by the Ohio Supreme Court to hear cases 80 CIV 1000 and 82 CIV 695 in the Columbiana County Court of Common Pleas. That judge held a hearing on the Respondents' motion for sanctions which Petitioner attended and then granted the requested sanction of dismissal and also imposed costs sanctions on Petitioner.

On November 30, 1984, Graham filed a Notice of Appeal on both 80 CIV 1000 and 82 CIV 695. The lower court had never ruled on the Rule 60(B) motion in 80 CIV 1000 (the divorce case).

On or about March 8, 1988, the Court of Appeals issued its opinion in the consolidated appeals of 80 CIV 1000 and 82 CIV 695. The Court found that Petitioner had not obtained a final appealable order in 80 CIV 1000 (the divorce case) because the common pleas court had never ruled on the pending rule 60(B) motion. Graham had not timely appealed the original decree or the modification order. Thus, it dismissed the appeal of that divorce case for lack of jurisdiction.

With respect to the other case, number 82 CIV 695, the appellate court found that despite the fact that the judges of the common pleas court had individually disqualified themselves from hearing either case, the common pleas court at all times retained jurisdiction over the case and that the sanctions granted by the assigned visiting judge were proper under the circumstances.

Graham also refers repeatedly to an Ohio case numbered 82-1517. This was an application for a writ of mandamus filed in the Ohio Supreme Court against Bettis and Stacey. On April 20, 1983, the Ohio Supreme Court granted a motion to dismiss the application filed by Bettis and Stacey. Petitioner has not timely sought review by this Court of that action.

———o———

SUMMARY OF ARGUMENT

This Court is without jurisdiction under 28 U.S.C. Section 1257(3) to review this case on a writ of certiorari because Petitioner failed to present the claimed federal questions in the state courts below, and Petitioner failed to present a substantial federal question in his petition. Further, the petition fails to present an important federal question or conflict between courts on a federal issue which would commend review by this Court under Supreme Court Rule 17.1.

———o———

ARGUMENT—REASONS FOR DENYING THE WRIT OF CERTIORARI

I. This Court Has No Jurisdiction To Issue The Requested Writ Of Certiorari

The jurisdiction of the United States Supreme Court to review state court decisions is governed by 28 U.S.C. Section 1257. The jurisdiction granted this court by Section 1257 is based upon the nature of the question presented. Petitioner seeks to invoke this Court's jurisdiction under 28 U.S.C. Section 1257(3) which provides for certiorari jurisdiction. Petitioner's fundamental misunderstanding of the nature of that Section is exemplified by his attempt to have this court issue the writ to the Ohio Supreme Court. The statute provides for a review by the highest state court in which a decision was or could be reached. *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). Where, as here, the "highest court" of a state declines to exercise its discretionary jurisdiction,

as the Ohio Supreme Court did in this case by overruling Petitioner's motion to certify the record of the appellate court, then the appellate court becomes the "highest court" for purposes of Section 1257 and the writ is properly directed to that court. *Abood v. Detroit Board of Education, supra; Adams v. Saenger,* 303 U.S. 59 (1938). Thus, Petitioner's petition is defective for failing to seek a writ directed to the proper court.

More important, however, is the fact that this court is without jurisdiction to grant the requested writ. 28 U.S.C. Section 1257(3) allows for review of state court cases in which any title, right, privilege or immunity is "specially set up or claimed" under the Constitution or federal law. This means that the federal question must have been raised for review in the state court proceedings, *Cardinale v. Louisiana,* 394 U.S. 437 (1969), and must be in accord with state practice. *Jones v. Hildebrant,* 432 U.S. 183 (1977). It is telling that Petitioner has failed to follow the requirements of Supreme Court Rule 21.1(h) which require that he disclose the stage of the state court proceedings in which the federal questions sought to be reviewed were raised. Petitioner failed to raise any federal claims at any stage of the state court proceedings. His attempt to now call into question Fourth Amendment (though Respondents are at a loss to understand the applicability of this Amendment to the Petitioner's argument) and Fourteenth Amendment issues is not timely and is insufficient to confer certiorari jurisdiction on this case under Section 1257(3) to review the state appellate court decision. *Lynch v. New York ex rel. Pierson,* 293 U.S. 52 (1934).

Additionally, 28 U.S.C. Section 1257(3) confers upon this court jurisdiction only with respect to *substantial* federal questions. *Zucht v. King,* 260 U.S. 174 (1922). Petitioner has not presented any such substantial federal questions; he has only attempted to cloak his dissatisfaction with state procedural law with federal constitutional verbiage. Because no substantial federal question is presented by Petitioner, this court is without jurisdiction under Section 1257(3) to grant the requested writ.

II. Even Assuming, Arguendo, That This Court Has Jurisdiction For Issuance Of The Requested Writ. The Petitioner Has Failed To Demonstrate Any Important Federal Question Compelling Allowance Of A Writ Of Certiorari

A review of the two underlying state court cases discloses that no questions of federal law are presented at all; these cases involve only the application of state procedural law.

With respect to 80 CIV 1000, the divorce case, the State appellate court found that there was no final appealable order from which Graham could appeal. OHIO REVISED CODE Section 2505.03 states that only judgments or final orders are appealable to an Ohio appellate court. The original divorce decree issued on December 17, 1980, and no Notice Of Appeal was filed thereafter. A modification order was filed on August 18, 1981, and no Notice of Appeal was filed thereafter. A motion to vacate the order was filed, pursuant to Ohio Rule of Civil Procedure 60 (B), on May 19, 1982, but the Columbiana County Court of Common Pleas never rule on the motion up to the date

Graham filed his Notice of Appeal, November 30, 1984, which filing then acted to deprive the common pleas court of jurisdiction to rule on the motion. Consequently, the state appellate court found that it was without jurisdiction over the appeal of that case because either the Notice of Appeal was not timely filed [if directed towards the original decree or the modification order—Ohio law provides that such a notice be filed within 30 days of journalization of the order. Ohio Rule of Appellate Procedure 40(A)] or the trial court had not issued a final appealable order on the pending Rule 60(B) motion so as to confer jurisdiction in the appellate court for review. No important federal issue is presented in that finding to commend review by this Court.

The Ohio Court of Appeals also correctly decided the appeal taken from the case against Respondents Judge Bettis and Clerk of Courts Stacey. The trial court dismissed Graham's complaint on a motion for sanctions under Ohio Rule of Civil Procedure 37(D). Ohio Rule of Civil Procedure 37(D) is virtually identical to Federal Rule of Civil Procedure 37(d). The appellate court found that under Ohio law the trial court retained jurisdiction over the case despite the fact that the judges of that court disqualified themselves and that discovery requested in that proceeding was therefore proper. The visiting judge, appointed by the Ohio Supreme Court to sit in the Columbiana County Court of Common Pleas on these cases, thus had jurisdiction to hear and rule upon the sanctions motion Respondents had filed for Petitioner's refusal to provide discovery.

No important federal question or conflict with other courts' decisions is presented in the State appellate court's

decision. The manner in which the trial court acted was totally consistent and in accord with the longstanding Ohio Rules of Civil Procedure, which parallel the Federal Rules of Civil Procedure on this issue. The discretion of the state court in dismissing the case pursuant to the state rule is fully supported by the evidence in the record.

Assuming, *arguendo,* that Petitioner has timely raised procedural due process issues stemming from the trial court's dismissal of his case against these Respondents pursuant to the Ohio procedural rule, his argument fails. An adequate state appellate procedure for review of the trial court's actions was provided him, and that is all that procedural due process requires in this situation. *Parratt v. Taylor,* 451 U.S. 27 (1981). No important federal question as contemplated by Supreme Court Rule 17.1 compels the issuance of a writ of certiorari for review of this relatively mundane state procedural action.

———o———

CONCLUSION

For all of the foregoing reasons, this Court should deny the Petition for a Writ of Certiorari to the Seventh District Court of Appeals of Ohio, or the Ohio Supreme Court, as requested by Petitioner.

Respectfully submitted,

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No. 88-1192

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IN THE

Supreme Court of the United States

October Term, 1988

ALVIE B. GRAHAM,
Petitioner,

vs.

JUDGE J. WARREN BETTIS, *et al.*,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE OHIO SUPREME COURT

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE OHIO SUPREME COURT

STATEMENT OF FACTS

Plaintiff-petitioner was involved in a domestic relations case in the Court of Common Pleas of Columbiana County, Ohio, Case No. 80 CIV 1000. In that case, a decree of divorce was entered December 17, 1980. On April 30, 1981, petitioner filed a motion for modification of the divorce decree. On May 21, 1981, petitioner's former wife also filed a motion for modification. The trial court conducted a hearing on both parties' motions on May 29, 1981, and during the hearing, it found petitioner in direct contempt of court

and sentenced him to ten days in the county jail. Petitioner did not appeal the contempt finding. On August 18, 1981, the trial court issued its judgment entry sustaining the motion for modification of petitioner's wife and overruled petitioner's motion. The petitioner did not appeal this judgment.

On May 19, 1982, petitioner filed a motion for relief from judgment pursuant to Ohio Civil Rule 60(B). The court never ruled on this motion, and a notice of appeal was filed in that case in conjunction with the notice of appeal in Case No. 82 CIV 695. The Court of Appeals dismissed the appeal as to Case No. 80 CIV 1000 for the reason that there was no final order from which a timely appeal could be taken.

On May 27, 1982, petitioner filed a complaint for damages in the Columbiana County Court of Common Pleas, being Case No. 82 CIV 695, seeking money damages from various defendants and alleging negligence on the part of defendant-respondent Eugene Smith. In that case, a notice to take the deposition of the petitioner was filed July 15, 1982, scheduling the deposition for July 27, 1982. Said deposition was continued at petitioner's request, and a second notice was filed scheduling the deposition for August 4, 1982. That deposition was continued at petitioner's request and rescheduled for August 30, 1982. Formal notice of deposition for August 30, 1982, was filed. Counsel for respondent Eugene Smith appeared at the courthouse in Lisbon, Ohio, on August 30, 1982, the designated time and place of the deposition, but petitioner failed to attend the deposition. All defendants-respondents filed similar motions for sanctions and dismissal, and the matter came on for hearing. The trial court sustained the motions of the various respondents for dismissal and sanctions.

Petitioner then appealed to the Court of Appeals for the Seventh District of Ohio in Case No. 84 C 51. This was a combined appeal of Case No. 80 CIV 1000 and Case No. 82 CIV 695. The judgment of the trial court as to the appeal in Case No. 82 CIV 695 was affirmed. As mentioned above, the appeal of Case No. 80 CIV 1000 was dismissed for lack of a final appealable order.

Petitioner then appealed to the Supreme Court of Ohio and filed a Memorandum in Support of Jurisdiction urging the Supreme Court to direct the appellate court to certify the record. The Ohio Supreme Court overruled petitioner's motion, this being Case No. 88-754. It is from this ruling that petitioner appeals to this Court.

While petitioner's briefs throughout this litigation have followed a rambling style which makes it difficult to focus precisely on the issue, it is unquestioned that petitioner did not attend the scheduled depositions pursuant to notice. Petitioner knowingly and wilfully refused to comply with the discovery requests properly made under the Ohio Rules of Civil Procedure. Ohio procedural law supports such an action as within the trial court's discretion. As stated in *Rauchenstein v. Kroger Co.* (1981), 3 Ohio App. 3d 178, syllabus paragraph one:

> "Where it has not been established that failure to comply with a discovery order was due to inability, such as illness, rather than wilfullness, bad faith, or any other fault of the party failing to comply, the trial court does not abuse its discretion in ordering dismissal of the pending action pursuant to Civ. R. 37(B)."

Thus, it was petitioner's obligation to rebut a motion for sanction of dismissal by establishing that his failure to comply was due to inability and with good

cause. There was no such evidence in this case, and the trial court's dismissal was appropriate and held properly within the trial court's discretion by the Court of Appeals.

As to the domestic relations case, Case No. 80 CIV 1000, the Court of Appeals properly determined that at the time the notice of appeal was filed, there was no final appealable order from which a timely appeal could be made.

Petitioner makes a number of references to the absence of a qualified judge to hear his cases. The domestic relations case was initially assigned to Judge J. Warren Bettis. At the request of respondent Eugene Smith, who was then representing petitioner, Judge Bettis voluntarily excused himself, and the case was reassigned to Judge Richard D. Kennedy (at that time, there were two full-time common pleas court judges assigned to the Columbiana County Pleas Court). Subsequently, petitioner sought to have Judge Kennedy removed from the case, and Judge Kennedy agreed to step aside in both the domestic relations case, 80 CIV 1000, and the case for damages, 82 CIV 695. Thereafter, the Ohio Supreme Court assigned the case to Judge David T. Matia.

Petitioner's numerous references to lack of a qualified judge have no basis and, in all events, were never properly raised. Judge Matia is from Cuyahoga County and served by appointment of the Ohio Supreme Court as a visiting judge in this matter.

Petitioner's reference in question four to a mandamus refers to an action in mandamus petitioner filed in the Ohio Supreme Court, Case No. 82-1517. This case was dismissed by the Ohio Supreme Court April 20, 1983, and no appeal was taken from this ruling.

CONCLUSION

The Ohio Supreme Court did not find that this case merited the acceptance of jurisdiction and further appellate review. None of the grounds petitioner raises are of the character described in Rule 17 of the United States Supreme Court Rules. The substance of this case, as presented in the Court of Appeals and as addressed to the Ohio Supreme Court, deals with two rather limited issues: first is the issue of whether there existed a final appealable order in Case No. 80 CIV 1000, and second whether the trial court abused its discretion in the application of sanctions to Ohio discovery procedures in Case No. 82 CIV 695. There certainly is no federal question which has been raised in this litigation.

For the reasons stated, respondent respectfully requests that the petition for a writ of certiorari be denied.

Respectfully submitted,

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JUDGE J. WARREN BETTIS
ET. AL.,
Respondent.

BRIEF IN REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE OHIO SUPREME COURT

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PARTIES TO THE PROCEEDING IN THE OHIO SUPREME COURT AND THE SEVENTH DISTRICT CCURT OF APPEALS OF OHIO

1. Alvie Graham
   Plaintiff-Appellant

2. J. Warren Bettis, Judge of the Columbiana County, Ohio, Court of Common Pleas
   Defendant-Appellee

3. Carl Stacey, Clerk of Court of the Columbiana County, Ohio, Court of Common Pleas
   Defendant-Appellee

4. Larry Dickey, Esq.
   Defendant-Appellee

5. Eugene Smith, Esq.
   Defendant-Appellee

6. Bertha I. Zahorsky
   Defendant-Appellee

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SUMMARY OF ARGUMENTS

This court is with jurisdiction under 28 U.S.C. § 1257 (3) to review this case on a writ of certiorari inasmuch as Petitioner has repeatedly, whether it be expressed or implied, presented a claim on federal questions in the state courts below, and Petitioner has definitely presented more than substantial federal questions throughout his petition. Further, the petition cites McDonald v. Mabee U.S. 90 (1917), an important federal question which first came into the state courts below on September 30, 1982. This Federal question arises out of Federal Rule 37, which would commend review by this Court under Supreme Court rule 17.1.

ARGUMENT - REASONS FOR SUSTAINING THE WRIT OF CERTIORARI

1. THIS Court has jurisdiction to issue the Requested Writ of Certiorari

Counsel of record for respondents, Mr. Eklund and Mr. Pfau, as in all other cases in the state courts below, has tried to provide this court an understanding that this petitioner is a stumbling and fumbling idiot. In Adam v. Saenger, 303 U.S. 57 (1938) [Eklund's case law] at page 61, is found the fact that this court granted certiorari and properly directed it to the highest court of the state in which a judgment could be had. Mr. Eklund predisposes that this petitioner erred in the proper direction for the writ when in actuality it was the Clerk of this Supreme Court who directed, upon further checking, this petitioner to the Ohio Supreme Court. Therefore, making Petitioner's petition proper and being supported in Adam v. Saenger, supra.

Mr. Eklund cites Cardinale v. Louisiana, 394 U.S. 437 (1969) and states that petitioner has failed to follow the requirements of Supreme Court Rule 21.1 (h). Petitioner's petition which clearly demonstrates that not one but two federal cases, with the same federal

question were brought out on September 30, 1982 in the Court of Common Pleas. Mr. Pfau brings up an interesting, in not controversial, hearing that being of May 29, 1981. This in actuality was not a hearing, but a "Kangaroo Court" [See affidavits, I.P.-12] for which this respondent was hired and paid nine hundred dollars to perfect said appeal. Yet Mr. Pfau submits to this court that this Petitioner failed to appeal the contempt finding when his client was employed for the very same purpose. This respondent saw fit, for whatever reasons, to frivor away ten months of this petitioner's time. Here again, Mr. Pfau submits that this petitioner untimely filed the Ohio Civil Rule 60 (B) when it was also the duty of his client to file said motion. This brings into full view the question of the Fourteenth Amendment right that Respondents are at a loss to understand.

Mr. Eklund further states that a Fourteenth Amendment issue is not timely. The actions of Judge Bettis on October 30, 1981 of disqualifing the Court from any further hearings in this

action, along with the actions then on July 29, 1982 of Judge Kennedy, the actions of the Supreme Court of Ohio in failing to follow with state procedural rules in not complying with the Mandamus to supply this petitioner with the decision of the Chief Justice of that Supreme Court denied this Petitioner "equal protection of the law" under the law, as is guaranteed by the Fourteenth Amendment. Further, the actions that Judge Kennedy instituted and the subsequent dismissal of this petitioner's cause in the eight years of litigation has deprived this petitioner the liberties of a freeman. These actions have dangerously impaired this petitioner's health and further, through the blantent violation of the Fourteenth Amendment, leaves this Petitioner only one legal remedy,this Court of Last Resort.

II. THE Petitioner has Abundantly Demonstrated Important Federal Questions Compelling Allowance of a Writ of Certiorari

A closer review of the two underlying state court cases shows that enumerous questions of federal law have been presented in the state courts below; these cases involved not only the application of state procedural law, but constitutional and federal questions.

With respect to 80-CIV-1000, and the State Appellate Court that inasmuch as the lower court had issued a joint and identical decision on November 5, 1984 in 80-CIV-1000, a 60(B) Motion and 82-CIV-695, a suit for damages. See transcript - Opinion of Court, pages 92-93 of 80-CIV-1000 in which context pages 59-67 are raised constitutional rights, and pages 67-68 of 82-CIV-695. At the hearing the sitting judge clearly violated state procedural law, in that ten witnesses were subpeonaed by this petitioner and all failed to appear. This judge failed to issue appropriate bench warrnats for these subpeonaed witnesses and to call a continuance until all witnesses were present. Yet Mr. Eklund claims, before this Court, that this Petitioner deprived the common pleas court

jurisdiction to rule on the 60(B) Motion. The State Appellate Court, appealled to properly inasmuch as the lower court twice violated state procedural law , was again violating constitutional rights and had rendered its decision on both causes on November 5, 1984 and this petitioner filed his Notice of Appeal on November 30, 1984.

With respect to Ohio Rule of Civil Procedure 37 (D), respondents still claimed jurisdiction over this petitioner. This petitioner maintains that on October 30, 1981, Judge J. Warren Bettis disqualified the "court" from any further hearings in this action [as was published in the local newspapers on Nov. 3, 1983] Journal 254, page 76. His action that day did not merely disqualify himself, but the Court, as is established in Ohio Revised Code, section 2301.01, and that Judge Kennedy usurped his authority by convening court on July 28, 1982 with regards to this petitioner's cause in that there was no court of jurisdiction 22 Ohio Jur 3d § 59. Judge Kennedy's action of

dismissing himself from the cause had no actual bearing whatsoever, in that the State Courts below overlooked the fact of the Judgment Entry and Journal Entry of October 30, 1981 in 80-CIV-1000 and found that the trial court retained jurisdiction.

CONCLUSION

The original cause of action, a divorce proceeding, and the subsequent standing decision of that court being not only biased, but contrary to law, coupled along with the actions of Judge Bettis on May 29, 1981 and the subsequent actions of Mr. Smith, to take personally acquired knowledge of the cause for the actions of May 29, 1981 by Judge Bettis, continued to deprive this Petitioner the due process of law. The underlying question that has been totally devoid of judgment by all state courts below is this:

> What law, be it constitutional, federal or state, allows one officer of a court law to acqure full knowledge of a willful wrong, committed against a litigant, to not approach the "higher" authority of such wrongdoing but to remain cloaked under the colour of law?

The actions of Mr. Smith along with the actions of those involved in the May 29, 1981 hearing and the conspiracy to deprive due process of law are directly coupled to the desire of the Respondents to maintain jur-

isdiction over this Petitioner, inasmuch as a court has not been re-established and a judge appointed by the Supreme Court of Ohio subsequent to the disqualification of the court on October 30, 1981, to protect the rights of this Petitioner.

Respondent Smith again compounds his criminal acts against the judicial codes and system in that he submitted his Answers to Suit in 82-CIV-695 and Motion to Dismiss, on Sanctions on the same day of September 1, 1982, after the Deposition was to have been ahd on August 30, 1982. However, this Petitioner had filed a Motion for a Protective Order on August 25, 1982, five days prior to the date of the deposition.

Yet, respondents continue to supply this ccurt with the false impression that this petitioner was willfully disobeying an order for deposition, when in fact, this Petitioner had never waived his rights to personal jurisdicton and those rights were ascerted under federal

law and established by the affidavit to Compel the Court that dismissal in this cause is severe and unjust as well as all claims of respondents to filing of appeals and arguments in support of cause. Petitioner has tried to lay out a roadmap as to where the evidence to support the cause appears in the record as well as to establish the acts of conspiracy of the judiciary by the various courts. In their haste to protect one of their own they have established a circus condition comparable to "Hey, Rube", which if not should be a disgrace to the legal profession. They have continued to annihilate the truth to such a degree that they throughly believe the results are the only truth, and now they are trying to use the same tactics before this Court, which can be ascertained through a thorough review of the Transcripts of the Causes and the records we have supplied to this court, to consider and that the markings of filing appear as factual documentation. This Petitioner further submits the Memoranda in Support recieved on

January 18, 1989 by this Court which is being submitted in accordance to Rule 33(.1)(d)(.2)(b)(2) which have been reproduced from the actual file. Please use the I.P. numbers as they appear as referral to the documents. Also please have the records certified in accordance with the I.P. Documents to the various courts.

The Petitioner respectfully submits to this Court and if he has in any way infringed upon the integrity of this Court he humbly apolgizes. It is just that after eight years of litigation, being bombarded by the mundane actions of Mr. Eklund, the inference by all respondents with regards to pro se litigants, and the fact that this Petitioner's property is still being held hostage makes this Petitioner's actons instinctive as opposed to respective.

Therefore, for all the foregoing reasons, this Court should sustain the petition for a Writ of Certiorari to the Ohio Supreme Court, as requested by this Petitioner.

Respectfully submitted,

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